REMARKS

This patent application presently includes Claims 1-17, all of which stand rejected. The claims are amended and all rejections are respectfully traversed.

Claims 1-17 were rejected over Steinwand or Reznik in view of the "prior art" and GB1004522 and GB 1228175 and Hsie et al. This rejection is respectfully traversed. Neither Steinwand, nor Reznik, nor any of the other references, nor any combination thereof renders the present claims obvious. Moreover, it is noted that the examiner is now asserting an improbable combination of no fewer than four references to arrive at the rejection. All of this, without any motivation for combining even two.

It is noted that the examiner did not respond to applicants' arguments regarding Steinwand and Reznik, but merely held them moot in view of the new grounds of rejection. However, the rejection is still based primarily on Steinwand and Reznik, with the addition of the two British references. Applicants' arguments are therefore not moot and must be addressed. They are therefore repeated below.

The Steinwand patent discloses a method for impregnating whole grapes with a sugar syrup under heat, while avoid disintegration of the grapes. The process involves subjecting the grapes to the hydrolyzing action of a sodium hydroxide solution, which modifies the cellulose, fibrous and starchy parts of the

fruit (i.e. the internal structure), and puncturing the skin and pulp, to permit impregnation of the grapes with the syrup under heat.

The Reznik patent discloses a system and process for rehydration of dates. The process involves fissuring the dates and placing them in a sealed enclosure, covered with water. When the enclosure is evacuated, air is drawn out of the dates. Subsequently, when air is reintroduced to the enclosure, the resulting pressure causes water to be forced into the dates in place of the air which was drawn out.

In contrast to Steinwand and Reznik, the present invention relates a process for introducing water activity controlling solutes into dried fruit. Claim 1 includes the steps of:

(a) provided dried fruit of a moisture content between 5 to 40% or more;

(b) disrupting the structure of the fruit while maintaining the integrity thereof;

(c) reacting with the fruit a solution containing one or more water activity controlling solutes, and drying to a desired moisture content.

Regarding the Steinwand patent, it should be noted that it relates to impregnating a sugar syrup into fruits and neither teachers nor suggests anything

about introducing a water activity controlling solute. In addition, the patent relates to treating whole grapes and not dried fruit with a moisture content of 5 - 40%. With the Steinwand patent involving these two major differences, there is no reason to believe that those skilled in the art would look to it for anything relevant to the present invention. Indeed, it is quite evident that Steinwand does not even constitute analagous art. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Since neither of these requirements was met in the present instance, the examiner may not rely on the Steinwand patent.

However, even overlooking this, for the purpose of argument, it could hardly be argued that the Steinwand process maintains the integrity of the fruit. Indeed, it requires both the skin and pulp of the fruit to be punctured. This can be seen in Fig. 3 of the patent, where the punctures extend at least half way into the body of the grape, so its integrity is clearly not maintained. Furthermore, there is not the slightest suggestion in Steinwand that the fruit be treated in any manner with a water activity controlling solute. Accordingly, the disclosure of the Steinwand patent is not only inappposite to the present invention, but lacking major claim limitations. Accordingly, claim 1 is not obvious over Steinwand and is believed to be allowable thereover.

Regarding the Reznik patent, it, too, teaches nothing about introducing water activity controlling solutes into a fruit. Moreover, the Reznik patent is entirely dependent on the use of a vacuum to draw water into the dates, that is entirely unnecessary in the present invention. A reference should be considered as a whole, and portions arguing against or teaching away from the claimed invention must be considered. *Bausch & Lomb, Inc. v. Barnes -Hind/Hydrocurve, Inc.*, 796 F.2d 443, 230 USPQ 416 (Fed. Cir 1986). Considering Reznik as a whole, the present process is not obvious over Reznik and is believed to be allowable thereover.

Moreover, the combination of Steinwand and Reznik still does not avoid the shortcomings of these references discussion above. Therefore, the present claims are also believed to be allowable over the combination of Steinwand and Reznik. The Examiner made reference to other "prior art" in rejecting claim 1, but there is not the slightest suggestion anywhere in the record of what that prior art might be. Accordingly, no further response is possible or necessary, in the present instance.

The two British patents relate to processes for the production of quick cooking pulses, particularly peas, produced from fresh mature pulses. The whole basis for the British patents is that mature pulses, particularly peas, are harder and slower to rehydrate and cook compared to peas which are harvested at an earlier

stage. The British patents allow previously rejected peas to be fully utilized in the production of dried peas for use in soups, dinner side dishes, and the like.

According to the British patents, pulses, particularly peas, of high maturity are impregnated with a solution of hydrophilic material and are subsequently submitted to a drying operation (see for example GB 1004522 at page 1 lines 23-31 and claim 1). In one aspect of the disclosures, the fresh peas are perforated using pricking means (see Example 2) of GB 1004522.

Applicant believes that the Examiner has confused the raw material, that is the fresh pulses, of the British patents with dried pulses (see page 2 last paragraph second line of Office Action). Applicant advises that fresh peas comprise about 78% moisture. The product of the British patents require rehydration and cooking to be edible (see Example 1 of GB 1004522 at lines 32-46).

The Hsieh patent is directed to processes for infusing high levels of humectants, such as glycerol, into dried fruits, particularly raisins. In the Hsieh process dried fruit is tumbled with high concentrations of glycerol so as to coat the surface of the raisins (see Example 1 at column 9). The dried fruit and humectant, particularly glycerol, are left to stand until the liquid humectant has infused into the dried fruit.

The Reznik patent's aim is not to lower the water activity of dried dates as is the case in Hsieh, but instead to increase the water activity by the

addition of water via a rehydration process. In Reznik, dried fruit, particularly dates, is fissured using a fissuring roller and then vacuum impregnated with water to increase the moisture content of the dates (see page 1, column 2 lines 25-33). In their specific process the fissuring of the skin enables air to be rapidly drawn out of the fruit allowing ready vacuum impregnation with water (see page 2, column 3 lines 10-21).

Steinwand teaches soaking fresh fruit in sodium hydroxide (see page 1, column 2 lines 28-33), where the hydroxide solution is poured on to the fresh fruit, particularly grapes, for a period of from 10 hours up to several days. Following this extensive alkali treatment, the fruit of Steinwand is then punctured with a puncturing roller as shown in Figure 3 having a plurality of spike projections extending radially from the roller surface. Steinwand teaches at page 3, column 3 lines 45-60 that puncturing the fruit and alkali treatment are essential to the operation of the Steinwand process. Accordingly Steinwand teaches that fresh fruit must be punctured and treated with hydroxide to obtain fluid uptake.

We will now consider the various combinations suggested by the examiner. As explained below, **the combination of references put forward by the Examiner would not be made by a person of ordinary skill in the art, and further teaches away from the invention as claimed.**

Combination of Steinwand with British patents

The fresh fruit of Steinwand, particularly grapes, and the use of this material to produce glacéd or candied fruits according to Steinwand, is a completely different technical field to the British patents concerned with production of dehydrated pulses, particularly peas, which are shriveled dehydrated vegetable products treated to make them quick cooking in boiling water by the consumer. Applicant maintains that a person skilled in the art would not combine the incompatible teachings of Steinwand with the British patents.

The object of Steinwand is to prevent fruit from cracking and shrinking during treatment with sugar syrup (see column 1 lines 10-15), whereas the British patents are concerned with dehydrating and shrinking the fresh pulses.

The essentiality of the combination of puncturing the grapes of Steinwand in combination with hydroxide treatment would have to be included in any combination with the British patents. Accordingly, Steinwand teaches, for example at column 2 lines 45-60, that puncturing grapes and treatment with sodium hydroxide is absolutely necessary for impregnation of the grapes with sugar syrup under heat. In contrast, the British patents teach that fresh pulses, particularly peas, are impregnated with a hydrophilic material, including sucrose, without any hydroxide treatment. Hence, Steinwand and the British patents teach opposite processes.

Combination of Steinwand with Hsieh

These patents are again in completely different technical fields, Steinwand being concerned with treating whole fresh fruits, particularly grapes, whereas Hsieh is concerned with processes involving dried raisins.

Whereas the fresh grapes of Steinwand are subject to a combination of hydroxide treatment followed by puncturing, the dried fruit of Hsieh is tumbled with a high percentage of a humectant, particularly glycerol. The processes are different, the objects are different, and the results of both processes are different.

Combination of Reznik with British Patents

Whereas Reznik describes an apparatus for hydrating dates, the British patents dehydrate fresh pulses, that is fresh peas. Again, the technical field is completely different and the processes are different. The fissuring of the skin of dates followed by vacuum hydration forcing water into the dates, is the completely opposite process to dehydrating, that is removing water from fresh peas as in the British patents. A vacuum impregnation of water to rehydrate fruit, particularly dates, is a completely nonsensical combination with processes for producing dried peas according to the British patents.

Combination of Reznik with Hsieh

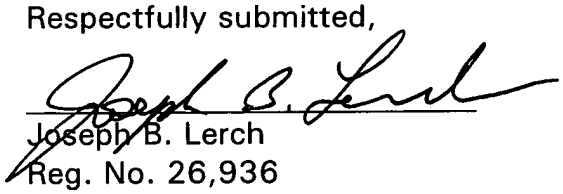
Whereas Reznik increases the water activity of dried dates via a vacuum rehydration process, Hsieh lowers the water activity of dried raisins by infusing into the raisins or other dried fruits a liquid humectant, particularly glycerol. Whereas Reznik vacuum impels water into dates, Hsieh simply tumbles dried raisins with the humectant glycerol. In combining these references, a person skilled in the art would not know whether to use water or glycerol, or how the vacuum impelling step of Reznik could be combined with the gentle tumbling of raisins in glycerol according to Hsieh. In any event, the combination of these references does not suggest the presently claimed invention.

In view of the foregoing, there can be no doubt that the rejection of claim 1 is without basis and should be withdrawn. Claim 1 should be allowed. Claim 2 has limitations similar to claim 1 and is allowable over Steinwand, Reznik, Hsie, the British references, or the combination thereof for the same reasons set forth above.

The remaining claims depend from claim 1 or claim 2, either directly or indirectly, and are believed to be allowable based upon their dependence from an allowable claim. However, these claims are also believed to allowable on their own merits, in that they disclose additional features not taught or suggested by the prior art.

Applicants' attorney has made every effort to place this patent application in condition for allowance. It is therefor requested that this patent application, as a whole, receive favorable reconsideration and that all of the claims be allowed as presently constituted. Should there remain any unanswered questions, the Examiner's is requested to call the Applicant's undersigned attorney at the telephone number indicated below.

Respectfully submitted,



Joseph B. Lerch
Reg. No. 26,936
Attorney For Applicant(s)

DARBY & DARBY P.C.
805 Third Avenue
New York, NY 10022
(212) 527-7700

M:\0885\0D930\JBL1874.WPD